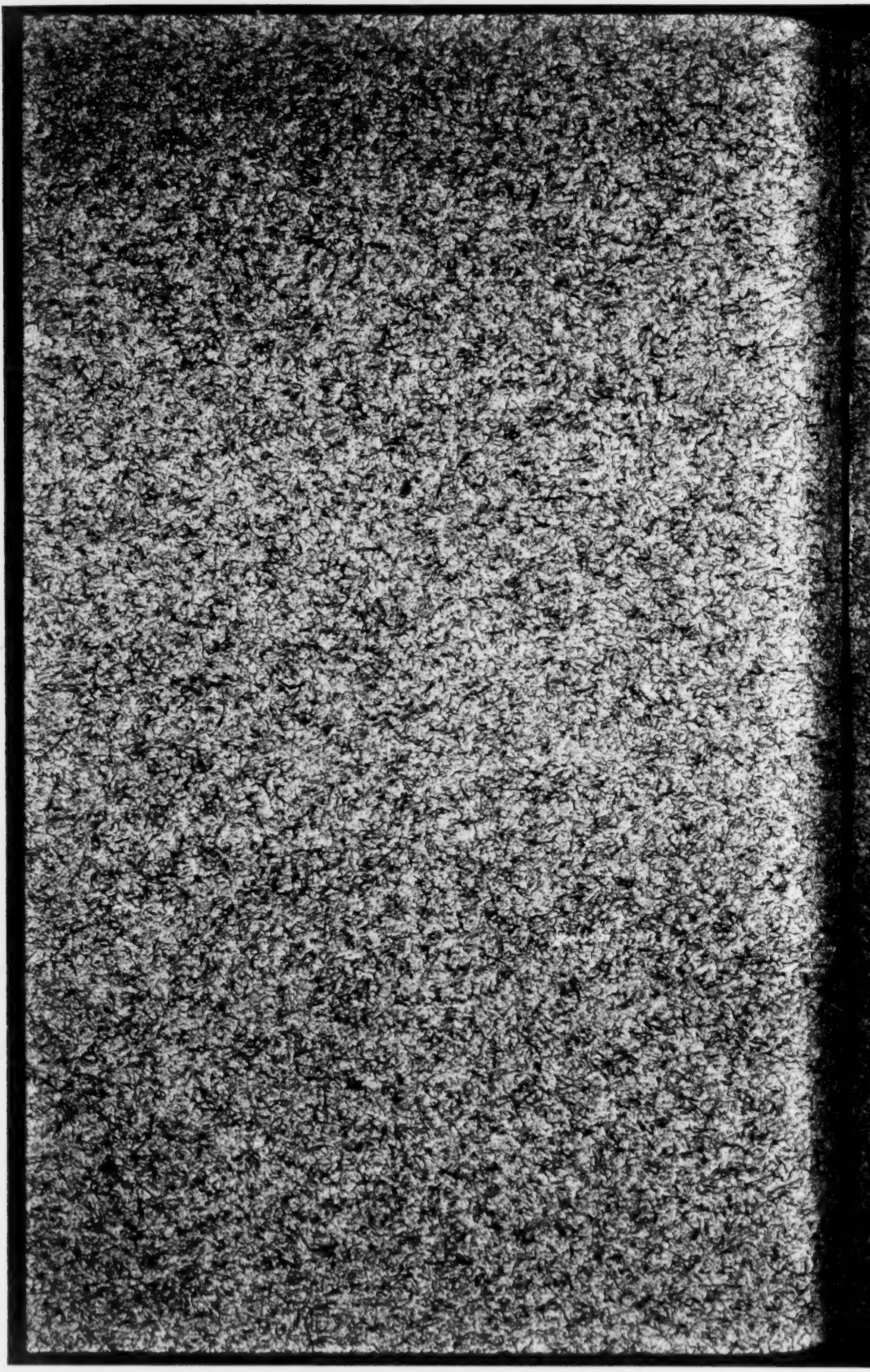

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934

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No. 261

S. A. TAYLOR, PETITIONER,

*vs.*

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

No. 262

JOHN R. DUTY, PETITIONER,

*vs.*

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## STATEMENT AND BRIEF FOR RESPONDENT

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CLINTON R. BARRY,
Attorney for Respondent,
Fort Smith, Ark.

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Argus Printing Company, Fort Smith, Ark.

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## STATEMENT AND BRIEF FOR RESPONDENT

---

### STATEMENT OF FACTS

The statement of facts in appellant's brief is incomplete and, in one important particular, is incorrect, in that the following statement is made:

> "On final hearing by the referee and in the District Court no question was raised as to the jurisdiction of the State Court to the appointment of the petitioners as receiver and attorney respectively. . . "

The above statement is in error, as will be shown by an examination of the Record. The Petition for Summary Order filed by appellee in beginning the whole proceedings states:

> "That the said Benton Chancery Court had no jurisdiction of the subject matter of said action for the reason that the same were insolvency proceedings for the winding up of said bankrupt corporation and that sole and exclusive jurisdiction in said matter is lodged by the Constitution of the United States and by various acts of Congress relating to bankruptcy now in force in the United States District Court for the Western District of Arkansas."

In deciding the matter, the referee held:

> "That (the) complaint can only be construed to be filed under the State Insolvency Act, and therefore the State Court had no jurisdiction as that jurisdiction is exclusive in the Courts of Bankruptcy."

In passing upon the petition for review filed by appellants from the referee's order, the district court simply affirmed the order made by the referee, which affirmed the above finding of the referee.

Appellants submits the following as more complete statement of the facts involved in this appeal:

On January 10, 1931, appellant Sidney A. Taylor was appointed Receiver for the Parks Dry Goods Company by the State Chancery Court of Benton County, Arkansas, in insolvency proceedings brought by certain unsecured creditors for the purpose of winding up the affairs of the corporation and distributing its assets among its creditors. On February 11, 1931, a bankruptcy petition was filed against the corporation in the United States District Court having jurisdiction of the matter; and on the same day the appellee, Henry Sternberg, was appointed Receiver in Bankruptcy for the corporation, made his bond and qualified as such Receiver. That the Receiver immediately went to Rogers, Arkansas, the domicile of the bankrupt corporation, and

notified both of the appellants, Sidney A. Taylor and John R. Duty, of his appointment. Thereafter, on February 13, 1931, the appellants presented their joint application to the State Court for compensation to be allowed to them as Receiver and as Attorney for plaintiffs and Receiver in said Court, and on the same day the State Court allowed the Receiver compensation in the sum of $1500.00 and his Attorney compensation in the sum of $500.00. On this same date, February 13, 1931, the Parks Dry Goods Company was adjudicated a bankrupt and thereafter, in delivering the estate to the appellee as Trustee, the appellants withheld the sums allowed to them by the State Court and refused to deliver the same to the appellee, as Trustee. Thereupon, the Trustee applied for a summary order on the appellants to turn over said sums to him and, the matter having been finally heard by the Referee, the Trustee's application was granted, which order was, on petition for review brought by appellants, affirmed by the Court. An appeal was taken by appellants to the Circuit Court of Appeals for the Eighth Circuit, which affirmed the order of the District Court.

## ARGUMENT

The appellants filed a response to the Trustee's application for a summary order which was in the nature of a demurrer to the jurisdiction of the Bankruptcy Court to entertain the application, or, in other words, a motion to dismiss the proceedings for lack of jurisdiction. No question of fact was presented to the Referee for determination by this plea and no denial was made of any of the allegations of the Trustee's application and the Referee, in passing upon appellants' plea to his jurisdiction, necessarily took the matters alleged in the Trustee's application as confessed, but by agreement of all parties the full record of proceedings in the State Court was presented to the Referee and considered by him in deciding the question of his jurisdiction.

The attention of the court is respectfully called to the following summary of the facts of the case which appear to appellee to be important: First: The bankruptcy petition was filed within four months of the appointment of the receiver by the State Court. Second: That their application for compensation was not filed by appellants in the State Court until after the petition in bankruptcy had been filed and after each of the appellants knew that it had been filed.

The above statements are not open to question. The second statement is proven by the following quotation from the application for compensation filed by appellants in the State Court. (Trans. page 23). "Your receiver wishes to report that a petition in bankruptcy Parks Dry Goods Company, and the defendant has consented to bankruptcy and that adjudication will be made immediately.

Your receiver also wishes to report that a receiver has been appointed in the Federal Court by order of the United States District Court for the Westen District of Arkansas."

## THE BANKRUPTCY COURT HAS SUMMARY JURISDICTION IF THE PROPERTY INVOLVED WAS CONSTRUCTIVELY IN POSSESSION OF ITS RECEIVER WHEN THE PROCEEDINGS WERE BEGUN.

Jurisdiction of the State Court and of the Bankruptcy Court in the premises is not concurrent. The jurisdiction of the Bankruptcy Court is superior and exclusive and jurisdiction of the State Court ceased when the bankruptcy petition was filed. This court has declared the above statement of law to be correct in many decisions among which we cite the following:

United States Fidelity & Guaranty Co. v. Bray, 225 U.S. 205, 206.

Lion Bonding & Surety Co. v. Karatz, 262 U.S. 640, 642.

Isaacs v. Hobbs Tie & Timber Co., 282 U.S. 734, 739.

Straton v. New, 283 U.S. 318-332.

Ex Parte Baldwin, 291 U.S. 610, 619.

Gross v. Irving Trust Co., 289 U.S. 342, 345.

Bryan v. Bernheimer, 181 U.S. 191, 193.

In re Watts & Sachs, 190 U.S. 1, 27.

Also see the following cases:

In re Crosby Stores, 63 Fed. 2nd 812, 814.

In re Diamond's Estate, 259 Fed. 70, 75; Certiorari Denied 249 U.S. 614.

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Gamble v. Daniel, 39 Fed. 2nd 447, 457.

In re Conservative Mortgage & Guaranty Co., 24 Fed. 2nd 38, 40.

Bank of Andrews v. Gudger, 212 Fed. 49, 55.

Moore v. Scott, 55 Fed. 2nd 863.

State of Missouri v. Angle, 236 Fed. 644, 653.

Hanna, et al. v. Brictson Mfg. Co. et al., 62 Fed. 2nd 139, 150.

At the time of filing the bankruptcy petition herein, the entire property of the bankrupt was intact in the hands of the receiver in the State Court. No application for distribution of any of this property had then been made by the appellants and no order distributing any of the property had been made. It is not true, as stated by appellants, that the State Court claimed jurisdiction to the extent only of compensating its receiver and his employees for services performed prior to the filing of the bankruptcy petition as the order of the State Court shows on its face that employees of the receiver were to be paid for services to be rendered by them after the making of the order, in that the court ordered employees to be paid for services up to February 15th, which was two days after the making of the order and no attempt was made by the court to limit compensation awarded by it to services performed prior to the filing of the bankruptcy petition. If the State Court and the Bankruptcy Court were not courts of concurrent jurisdiction, then, it was not possible for both courts to have possession of the estate of the bankrupt at the same time. The possession of the State Court had to end before the possession of the Bankruptcy Court could begin. It has long been held that the possession of a trustee in bankruptcy dates from the time of the filing of the petition in bankruptcy and that the trustee has constructive possession of all property which the bankrupt had and claimed title to on that date or which was held for him by others. It is not a practical proposition to say that the receiver of a State Court is not an adverse holder of an undetermined and undivided portion of an estate in his hands and is at the same time an adverse holder to another undetermined and undivided portion of the same estate. If he is an adverse holder of any substantial portion of an estate which portion is at the time undetermined and undivided, he is necessarily an adverse holder of the entire estate for it cannot be told until the State Court acts in the premises what portion, if any, will be relinquished to the custody of the Bankruptcy Court. Under these circumstances the so-called paramount jurisdiction of the Bankruptcy Court would

be a mere shadow without substance and jurisdiction to deal with the property would rest solely in the State Court until, by its own order it had decided what portion, if any, to turn over to the Bankruptcy Court. A Bankruptcy Court cannot administer an estate which is partly in its hands and partly in the hands of some other court. Complete and exclusive jurisdiction is exclusive.

This court in Taubel-Scott-Kitzmiller Co. vs. Fox, 264 U.S. 426, succintly stated the rule as follows:

> "The possession, which was thus essential to jurisdiction, need not be actual. Constructive possession is sufficient. It (constructive possession) exits where the property was in the physical possession of the debtor at the time of the filing of the petition in bankruptcy, . . . where the property is in the hands of the bankrupt's agent or bailee; where the property is held by some other person who makes no claim to it."

An examination of the entire record of the proceedings in the State Court shows that they were purely insolvency proceedings begun by unsecured, single contract creditors for the sole and only purpose of winding up an insolvent corporation and distributing its assets among its creditors. No party to the proceedings claimed any special interest in or lien on its assets. The possession of the receiver in the State Court was therefore the possession of the Parks Dry Goods Company, the defendant in the proceedings, and was not in any sense adverse to it.

That the State Court had no jurisdiction to make the order under which appellants claim is not open to question since the decision of this Court in Gross v. Irving Trust Co., 289 U.S. 342, 345.

## THE APPELLANTS' CLAIM TO THE FUNDS IN QUESTION WAS MERELY COLORABLE.

The Bankruptcy Court had the right to consider and

decide the question of its own jurisdiction, and if the claim of the person holding the property is colorable only, the Court has jurisdiction to proceed in a summary manner. Taubel-Scott-Kitzmiller Co. v. Fox, *supra*. May v. Henderson, 268 U.S. 111, 116.

The Referee expressly found that the claim of the appellants to the funds withheld by them was colorable only, and his finding was affirmed by the District Court on review. It is agreed that no disputed question of fact was involved in the controversy between appellants and appellee. The exact and precise character of the possession of the appellants to the property involved was presented to the trial court without dispute. It only remained for the Court to determine whether, under the law, the facts justified the appellants in withholding the property. The case of Gamble v. Daniel, 39 Fed. 2nd 447, 455 (C.C.A. 8th) is in point. As above pointed out, since the decision of this Court in Gross v. Irving Trust Co., *supra*, the law is settled that the State Court had no jurisdiction to make the orders under which the appellants claim the funds in dispute. We think that this decision stated the rule as it was theretofore generally applied in Courts of the United States throughout the Union. If any decision to the contrary is to be found in any of the Circuit Courts of Appeal, the diligence of counsel for appellants has not brought it to light. The case of Lion Bonding & Surety Co. v. Karatz, 262 U.S. 640, 642, was decided by this Court in 1923 and in that case the court said:

> "Even where the Court which appoints a Receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court."

The above decision was written eight years before the appellants applied to the State Court for an allowance for their compensation. Under these circumstances, we respectfully submit that it cannot be said that the

right of the State Court to make the allowances involved in this case was in doubt, as a matter of law, at the time appellants filed their application for compensation in said Court. It follows that, neither the facts nor the law with reference to appellants' claim being open to doubt, their claims were colorable only and were properly adjudicated in summary proceedings.

Since, under the decision of this Court in Gross v. Irving Trust Company, *supra*, the State Court has no right or jurisdiction to fix or allow compensation to appellants in this case after bankruptcy has supervened, if this Court shall hold that appellants cannot be proceeded against summarily but must be sued in a plenary action, an interesting situation will confront us. There is no provision of the Bankruptcy Act or other federal statute under which they could be sued in a Court of Bankruptcy or United States District Court. If the State Chancery Court which made the original allowance had no jurisdiction to make it on motion of the appellants, then it would have no right or jurisdiction to entertain an action which would necessarily involve a finding of the amount due, on application of the Trustee. This would leave the State Circuit Court as the only forum open to the Trustee, and this by a trial before a jury. If, on the other hand, we assume that the decision of this Court in Gross v. Irving Trust Co., means that, while a State Court may not make an allowance for compensation to its Receivers after bankruptcy supervenes, it does have jurisdiction to entertain a motion by the Trustee in Bankruptcy to require its Receiver to turn over ALL of the property in his hands to the Trustee, and as an incident to such jurisdiction may inquire into and determine the amount of property in its hands and as to whether or not all of the estate has been delivered to the Trustee, such a construction does not aid the appellants' case. The only facts open to inquiry in the State Court in such case have been settled by the admissions on the record by the appellants. They admit and agree that they are withholding the sums claimed by the appellee and that said funds came into their

hands as part of the estate of the Parks Dry Goods Company, the bankrupt. If the appellants denied that the funds in question ever belonged to the Parks Dry Goods Company or that they came into their possession by virtue of the Receivership, and such claim or claims were apparently made in good faith, their claim would not be colorable only, and would have to be adjudicated through plenary proceedings. However, since appellants admit the only facts which the State Court in plenary proceedings could possibly have jurisdiction to establish and determine as a basis for a judgment against appellants, their claim to the property loses all substance and becomes colorable only. The appellants are in no position to ask this Court to grant them the right to defend a plenary suit for these funds when, by their own evidence and admissions in this Court and in all of the other Courts through which this action has found its way, there is no law or decision of any court which would justify the State Court in deciding the case in their favor. As above stated, a plenary suit for the recovery of this money against appellants could only mean a suit in the State Chancery Court which originally awarded it to them, as there is no jurisdiction for such an action in any federal court. It must be assumed that the State Court would follow the decision of this Court in Gross v. Irving Trust Co., and in such case the inevitable result would be an order to turn the property over to the appellee as Trustee, the State Court lacking jurisdiction to make any other order if, indeed, it has any jurisdiction at all in the premises.

In their response to the trustee's application for a summary order the only claim that appellants made to the funds withheld by them was based upon the allowance of compensation made to them by the State Court after bankruptcy had supervened. Since it is not open to question that the State Court had no jurisdiction to make this order, and, since the appellants are making no other claim to this money, no better illustration of a claim which is colorable only, and without substantial basis in law or in fact could hardly be found. Appellants are

naked holders of the property under an order of a State Court which is voided for want of jurisdiction.

ALL PROCEEDINGS IN THE STATE COURT WERE VOID FOR WANT OF JURISDICTION IN THAT THE SOLE JURISDICTION OF THE STATE COURT WAS DERIVED FROM A STATE INSOLVENCY ACT WHICH HAD BEEN SUSPENDED BY THE PASSAGE OF THE NATIONAL BANKRUPTCY ACT.

The jurisdiction of the State Court was derived solely from Sub-division 7 of Chapter 38 of the Digest of the Statutes of Arkansas, which Sub-division is as follows:

"INSOLVENT CORPORATIONS

Preferences forbidden. No preferences shall be allowed among the creditors of insolvent corporations, except for the wages and salaries of laborers and employees. Act April 14, 1893, 1 p. 345.

Procedure. Any creditor or stockholder of any insolvent corporation may institute proceedings in the chancery court for the winding up of the affairs of such corporations, and upon such application the court shall take charge of all the assets of such corporation and distribute them equally among the creditors after paying the wages and salaries due laborers and employees. Id., 2.

Preferences set aside. Every preference obtained or sought to be obtained by any creditor of such corporation, whether by attachments, confession of judgment or otherwise, and every preference sought to be given by such corporation to any of its creditors, in contemplation of insolvency, shall be set aside by the chancery court, and such creditor shall be required to relinquish his preference and accept his pro rata share in the distribution of the assets of such corporation; provided, no such preference shall be set aside unless complaint thereof be made within ninety days after the same is given or sought to be obtained. Id., 3.

Notice to creditors. When any chancery court shall obtain jurisdiction of any such insolvent corporations under the provisions of this act, it shall direct notice to be given to all the creditors of such corporations to present their claims within ninety days thereafter, for the purpose of sharing in the assets of such corporation. Id., 4."

The Legislature of Arkansas, by Act No. 250 of the Acts of Arkansas, 1927, page 854, provided as follows:

"Section 39. Dissolved Corporations; Receivers for, How Appointed; Powers.—When any corporation organized under this act shall be dissolved or cease to exist in any manner whatever, the Chancery Court on application of any creditor or stockholder of such corporation, at any time, may either continue such directors, trustees as aforesaid or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with powers to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being that may be necessary for the final settlement of the unfinished business of the corporation; if in being that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the Chancery Court shall think necessary for the purposes aforesaid.

Section 40. Jurisdiction of Chancery Court.—The Chancery Court shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

Section 41. Trustees or Receivers; Duties of.—The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient

therefor, and if not, they shall distribute the same ratably among all of the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses (or the making of adequate provisions thereof), they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

In case of dissolution, upon the appointment of receiver or trustee, when the corporation is insolvent, the proceeds realized from the estate shall be paid according to the following priorities:

1. The expenses of the proceedings or winding up of the corporation.

2. Any debt due the United States or State and not otherwise secured, including taxes.

3. Wages due to employees, other than officers of the corporation, for not exceeding two months prior to the proceedings to wind up the corporation, and not exceeding Three Hundred ($300.00) Dollars."

It is not believed by counsel that the above statute has any application in this case for the reason that its application is limited strictly to cases arising upon dissolution of a corporation by the voluntary action of its stockholders or through any other cause recognized by law. The dissolution of the Parks Dry Goods Company was not involved in the proceedings of the State Court in this case. If the court is of the opinion, however, that the State Chancery Court might have acted by authority of the above statute, the situation remains the same as a matter of law. It is now well settled that the purpose of Congress to establish uniformity necessarily excludes state regulation and that states may not pass or enforce laws to interfere with or complement the Bankruptcy Act, or to provide additional or auxiliary regulations."

International Shoe Co. v. Pinkus, 278 U.S. 261, 268.

Boese v. King, 108 U.S. 379.

Prigg v. Pennsylvania, 16 Peters 539, 617, 618.

Northern Pac. Ry. Co. v. Washington, 222 U.S. 370, 378 et seq.

St. L. Iron Mtn. & S. Ry. Co. v. Edwards, 227 U.S. 265.

Erie Ry. Co. v. New York, 233 U.S. 671, 681 et seq.

New York C. R. Co. v. Winfield, 244 U.S. 147, 150, et seq.

Oregon-Washington R. & Nav. Co. v. Washington, 270 U.S. 87, 101.

It is hardly necessary to go into detail to show that the State Court acted under a state insolvency act which was intended to act upon the same subjects and to cover the same field and to afford the same character of relief as the National Bankruptcy Act. The jurisdiction of the State Court is founded upon the insolvency of the corporation; a receiver is provided for to perform the same duties as the trustee in bankruptcy; claims are required to be filed with the court within a specified time; notice is required to be given to creditors and the estate is to be distributed in accordance with priorities fixed by the statute and which priorities are entirely different from the uniform system established by Congress and set forth in the National Bankruptcy Act. It is true that no discharge is provided for by the State law, but as this statute operates upon corporations only, this omission is unimportant and a discharge is unnecessary. The dissolution of a corporation is, of itself, an absolute and effective discharge from all further liability for its debts if all of the assets of the corporation are at the same time distributed to its creditors. There can be no further liability on the part of a corporation which no longer exists.

The petition filed in the State Court for appointment of a Receiver shows on its face that the defendant Parks Dry Goods Company was amenable to the terms of the National Bankruptcy Act. It was shown to be a business corporation and not of the class of corporations

not within the purview of the Act; it was insolvent and owed debts of more than $1000.00 in amount.

## AFFIRMANCE IN THIS CASE IS NECESSARY FOR THE PROMPT AND EXPEDITIOUS ADMINISTRATION OF BANKRUPTCY ESTATES UNDER THE CIRCUMSTANCES SHOWN IN THIS RECORD.

The prompt and expeditious administration of estates is one of the principal aims of the National Bankruptcy Act. It is best accomplished by concentrating the administration of an estate in one court. This idea is expressed by the decisions of this Court in Isaac v. Hobbs Tie & Timber Co., 282 U.S. 734, 739, and Stratton v. New, 283 U.S. 318, as well as the Rules in Bankruptcy recently promulgated by the Court. If a receiver of a State Court appointed in insolvency proceedings within four months of bankruptcy can demand the filing, trial and final judgment of a plenary action before turning over the estate in his hands, a serious delay may, and in many cases will, interfere with the administration of the estate in the Bankruptcy Court. A plenary action means an action filed in the State Court by the Trustee in bankruptcy, as there is no federal statute under which such a suit may be filed in a federal court. In a great many counties in Arkansas the Chancery Court is in session but twice a year and these terms last for only two or three days each. The Receiver's answer is not due under our Statutes until the first day of the next term and if the Trustee is so fortunate to secure a hearing of the case upon the merits at this first term and a final judgment in his favor, he has still been put to the expense of hiring a lawyer and to a delay of from one to six months. From any order the court may make the right of appeal exists. It may be taken that the average time consumed in appealing a case to the Supreme Court of Arkansas and securing a final decision is about one year. During all of this time the Bankruptcy Court could only helplessly await the delivery of the estate to it at the final outcome of the plenary action.

Receivership cases in the State Courts under our Insolvency Statute are frequently, and we might say usually, of the character usually called "friendly proceedings." The proceedings in this case fall within that class. Beyond entering its appearance on the record in the State Court, the defendant Parks Dry Goods Company never thereafter took the slightest interest in the proceedings. When the appellants presented their application for compensation and the same was allowed by the State Court on the same day it was filed, no person or party whose interests were adverse to the allowances made was present either in person or as a party to the action. The unsecured creditors who were plaintiffs in the action were represented by one of the appellants who was himself a petitioner before the court for the allowance of the funds involved, both for himself and for his client, the Receiver. Under these circumstances it cannot be said that the plaintiffs in the case appeared as adversaries to the allowances made by the Court.

We believe it to be a self-evident fact that property rights of this magnitude should not be disposed of in proceedings of this character. To say that the Trustee, after his appointment, has the right of appeal from any order made by the State Court affords little aid or comfort to the creditors of the estate. As heretofore pointed out, appeals are slow; they are expensive and the disposition of creditors, who each have only a small interest in an estate as a rule, will be to submit to the injustice wrought in these friendly proceedings rather than incur the expense and delay of an appeal.

To require a State Court Receiver to turn over the entire estate in his hands without waiting for the slow and expensive process of a plenary suit to grind its grist, involves no possible injustice to him or to his employees. His lien upon the property turned over for his compensation and expenses is recognized and enforced by the Bankruptcy Court and the proceedings in that Court for the determination of amounts due and ordering payment are simple, fair and expeditious. No costs are

required to be paid either in proceedings before the referee or before the Court on review.

All of the cases cited by appellants involve common law assignments for benefit of creditors and do not touch upon insolvency proceedings in State Courts. This Court has uniformly drawn a clear line of distinction between these two classes of cases and has given its approval to the time-honored custom of distributing the estate of insolvents by means of assignments for the benefit of creditors, but this Court has with equal consistency denied the right of the states to set up and administer their own peculiar systems of bankruptcy while the National Bankruptcy Act is in force.

International Shoe Co. v. Pinkus, 278 U.S. 261, 268.

Fidelity-Philadelphia Trust Co. v. Philadelphia-Girard National Bank, 33 Fed. 2nd 649.

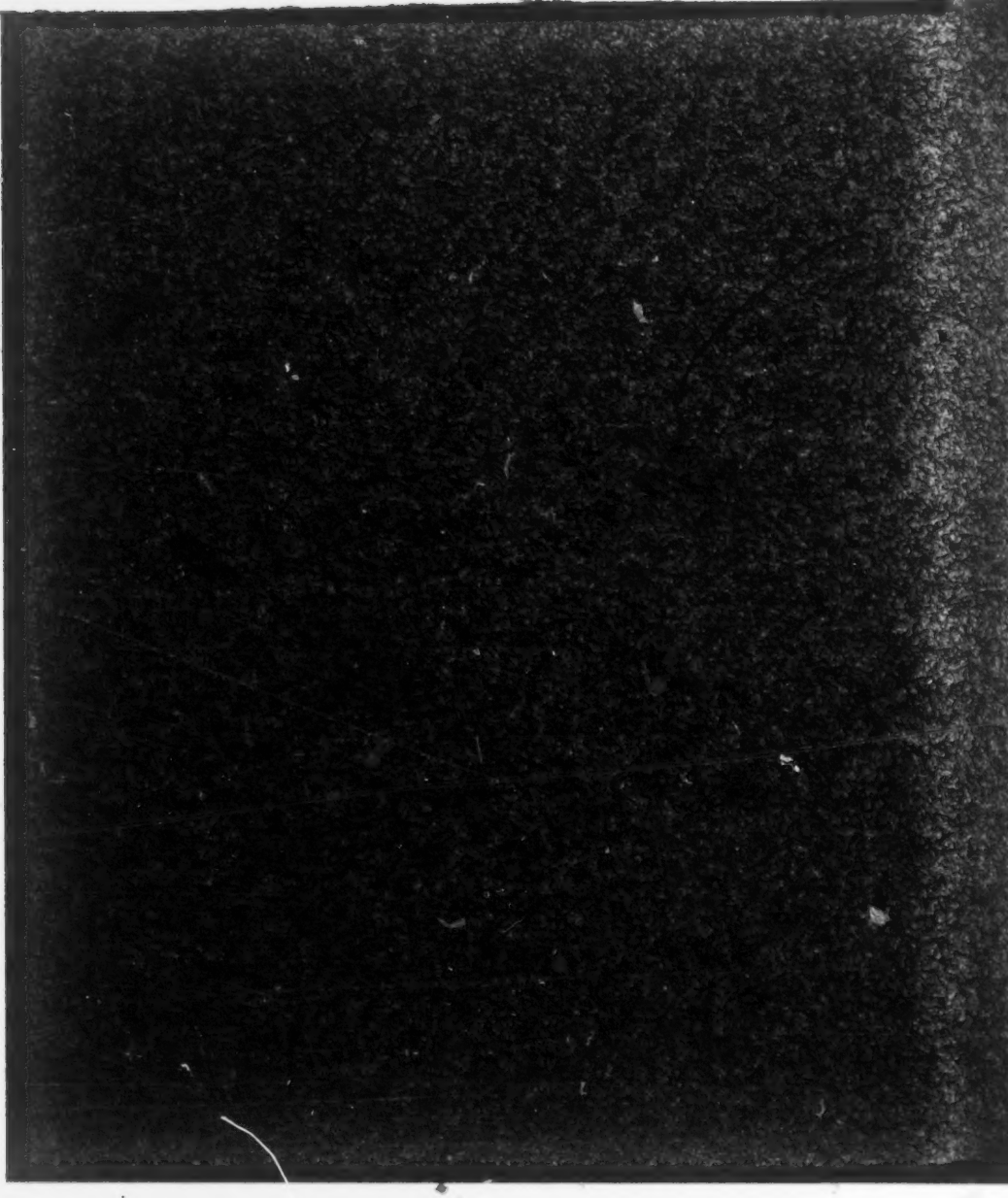
Johnson v. Star, 287 U.S. 527.

Pobreslo v. Boyd Co., 287 U.S. 518, 526.

For the reasons stated, appellee respectfully submits the decision of the Circuit Court of Appeals in the premises is right and ought to be affirmed.

CLINTON R. BARRY,
Attorney for Respondent.

# OPINION



# SUPREME COURT OF THE UNITED STATES.

Nos. 261 and 262.—October Term, 1934.

S. A. Taylor, Petitioner,
261 *vs.*
Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt.

John R. Duty, Petitioner,
262 *vs.*
Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[January 7, 1935.]

Mr. Justice Sutherland delivered the opinion of the Court.

These cases, depending upon the same facts, present the same question. On January 10, 1931, in an insolvency proceeding, Taylor was appointed by a state chancery court in Arkansas receiver of the Parks Dry Goods Company, and Duty as his attorney. On February 11th, a month later, a petition in bankruptcy against the corporation was filed in the federal district court having jurisdiction. Two days later, the corporation was adjudicated a bankrupt. On the same day, the chancery court allowed Taylor compensation as receiver in the sum of $1500, and Duty compensation as attorney in the sum of $500. The receiver turned over the estate to the trustee with the exception of these sums, which petitioners refused to deliver. The trustee applied for a summary order upon petitioners, directing them to turn over to him the sums thus withheld. The referee granted the trustee's application, which the district court, sitting in bankruptcy, affirmed; and this, in turn, was affirmed upon appeal by the circuit court of appeals. 71 F. (2d) 157. Upon these facts, the question presented is whether the bankruptcy court had authority to compel the turn-over by

summary proceeding and order, or whether petitioners were adverse claimants so that a plenary action was required.

Upon adjudication in bankruptcy, all the property of the bankrupt vests in the trustee as of the date of the filing of the petition. Upon such filing, the jurisdiction of the bankruptcy court becomes paramount and exclusive; and thereafter that court's possession and control of the estate cannot be affected by proceedings in other courts, whether state or federal. *Gross* v. *Irving Trust Co.*, 289 U. S. 342, 344; *Acme Harvester Co.* v. *Beekman Lum. Co.*, 222 U. S. 300, 307; *In re Diamond's Estate*, 259 Fed. 70, 73. This applies while the possession is constructive as well as when it becomes actual. *Mueller* v. *Nugent*, 184 U. S. 1, 14; *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426, 432-433; *Orinoco Iron Co.* v. *Metzel*, 230 Fed. 40, 44-45, and cases cited.

The status of a receiver is unlike, for example, that of an assignee for the benefit of creditors. The receiver is an officer of the court which appoints him. *Stuart* v. *Boulware*, 133 U. S. 78, 81. The property in his hands is not, in a legal sense, in his possession. It is in the possession of the court, whose appointee he is, by him as its officer. *Thompson* v. *Phenix Ins. Co.*, 136 U. S. 287, 297; *Fosdick* v. *Schall*, 99 U. S. 235, 251. In the present case, with the supervening bankruptcy, the possession of the state court came to an end, and that of the bankruptcy court immediately attached. This result was binding upon the state court and equally binding upon the receiver as custodian for that court. Before the petition in bankruptcy was filed, the receiver's compensation as well as that of his counsel were matters wholly within the control of the state court. *Stuart* v. *Boulware, supra*, at p. 81-2; High on Receivers, 4th ed., § 781. But with the filing of the petition in bankruptcy, the power of the state court in that respect ceased; and its order fixing the compensation of the receiver and his counsel was a nullity because made without jurisdiction, such jurisdiction then having passed to the bankruptcy court. *Gross* v. *Irving Trust Co., supra.*

Since the order of the state court was the sole foundation for their claims and that was void, petitioners had no more right to the sums subtracted or to be subtracted from the estate than they had to the remainder of the estate. That estate, including such sums, was still *in custodia legis*—only the possession had passed automatically from the state court to the bankruptcy court. There-

after, the estate in its entirety was held by the receiver as a mere repository for the bankruptcy court and, therefore, not adversely; and petitioners, in respect of that part of it erroneously awarded as compensation, were in no sense adverse claimants. Their claims were colorable only and subject to the summary power of the bankruptcy court. *In re Watts and Sachs,* 190 U. S. 1, 27; *In re Diamond's Estate, supra,* at p. 74; *Moore* v. *Scott,* 55 F. (2d) 863; *Bank of Andrews* v. *Gudger,* 212 Fed. 49; *In re Crosby Stores, Inc.,* 61 F. (2d) 812, 814.

Cases dealing with assignments, like *Louisville Trust Co.* v. *Comingor,* 184 U. S. 18, cited by petitioners, in no way militate against this conclusion. The situation presented in each of those cases substantially differs from that presented here. See *May* v. *Henderson,* 268 U. S. 111, 115-6; *In re Louis Neuburger, Inc.,* 233 Fed. 701, *aff'd* 240 Fed. 947. Moreover, the status of a receiver and that of an assignee, as already sufficiently appears, is essentially different.

*Judgment affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*